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October 21, 1996

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace; CC Docket No. 96-61

Dear Mr. Caton:

Transmitted herewith on behalf of the State of Alaska are an original and eleven copies of the "Opposition of the State of Alaska To Petitions For Reconsideration, Partial Reconsideration and Clarification" in the above-referenced proceeding.

In the event there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

Robert M. Halperin

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	
	)	CC Docket No. 96-61
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	

OPPOSITION OF THE STATE OF ALASKA TO PETITIONS FOR RECONSIDERATION, PARTIAL RECONSIDERATION AND CLARIFICATION

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October 21, 1996

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SUMMARY

In enacting the Telecommunications Act of 1996, Congress mandated that the FCC adopt rules requiring telecommunications providers to geographically average and integrate their rates for interexchange service. In taking this step, Congress recognized the importance of ensuring that all Americans -- particularly those in remote and high-cost locations such as Alaska -- receive interexchange service at affordable and nondiscriminatory prices.

The State of Alaska urges the Commission to dismiss or deny the petitions for reconsideration, partial reconsideration, or clarification filed by AT&T Corporation ("AT&T"), GTE Service Corporation ("GTE"), U S West, Inc. ("U S West") and AMSC Subsidiary Corporation ("AMSC"). None of these petitioners has demonstrated that the Commission's Report and Order, which implemented Congress's mandate for geographic rate averaging and rate integration rules, was erroneous. Indeed, many of the petitioners -- AT&T and AMSC, in particular -- only reiterate positions they previously presented and the Commission rightly rejected. Except for AT&T, these petitions seek relief from the rate integration portion of the Report and Order; yet Congress was clear that the Commission has no authority to forbear from enforcing rate integration. Comments specific to each petition are briefly summarized below:

AT&T. AT&T requests that geographic rate averaging requirements not be enforced against nation-wide interexchange service providers competing against regional providers. This request inherently assumes that Congress did not know

when it wrote Section 254(g) into the Nation's telecommunications law that it was also permitting the Regional Bell Operating Companies to provide interexchange services. Clearly, the Commission cannot conclude that Congress was unaware of other portions of the Telecommunications Act. The problem of which AT&T complains, if it exists, is one that will vanish quickly in light of, among other things, its own entry into local exchange markets. Moreover, the Commission cannot conclude that such widespread forbearance is in the public interest now, when Congress has just imposed the requirement for geographic rate averaging.

AT&T also asks the Commission to reconsider its decision to forbear from enforcing geographic rate averaging requirements on short-term promotions only if such promotions do not last more than ninety days. This decision by the Commission was reasonable, particularly in light of the rapid rates of churn in the interexchange business and the predicted increase in competition.

GTE and U S West. These petitioners allege that the Commission acted improperly in concluding that interstate interexchange services provided by different subsidiaries of the same parent corporation should be viewed collectively for rate integration purposes. Yet, this conclusion is not only reasonable, it is necessary. As the Commission stated in the Report and Order, to conclude otherwise would permit interexchange carriers to eviscerate Section 254(g) by forming different subsidiaries to provide interexchange service in different states. Congress did not intend to create such a loophole. Moreover, the Commission's position is compelled by its prior conclusion -- which it proposes to reach again in

this proceeding -- that there is only one product and geographic market for interstate interexchange service.

With respect to U S West, this conclusion should not be problematic because the two subsidiaries about which it has concerns do not provide the same services (indeed, one apparently does not provide interexchange service at all). The State does not oppose GTE's petition to the extent it seeks to clarify that paragraph 69 applies to all providers of interexchange service.

AMSC. AMSC seeks to be excused from rate integration (and implicitly, geographic rate averaging) on the basis that Section 254(g) does not apply to its provision of mobile satellite service. Yet, AMSC states that it provides interstate interexchange service, and there is nothing in the statute or in the legislative history to support its position that Congress intended to carve it out. AMSC's contention that Congress meant only to codify the Commission's pre-existing geographic rate averaging and rate integration policies is erroneous; there are numerous examples of ways in which the statute is broader than pre-existing policies.

AMSC also seeks to persuade the Commission that its practice of charging users in Alaska and Hawaii more than it charges users in other states is consistent with rate integration. Yet, AMSC's approach is inconsistent with the geographic rate averaging requirements of Section 254(g) as well as the rate integration requirements.

In reviewing all of these petitions (and AMSC's pending Request for Extension of Compliance Deadline), the Commission should keep Congress's clear mandate in mind and not eviscerate Congressional action or intent. The risks of this are apparent in the petition of IT&E Overseas, Inc.

Alaska supports the petition for clarification and reconsideration of the State of Hawaii. Services as to which the Commission is forbearing from enforcing geographic rate averaging are nonetheless subject to enforcement of rate integration requirements. This result is compelled by paragraph 27 of the Report and Order. The Commission cannot assume that all current or prior AT&T service offerings comply with Section 254(g). This result is compelled by, among other reasons, the recognition that the Commission has not ruled on the legality of all current and prior AT&T service offerings.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	CC Docket No. 96-61

OPPOSITION OF THE STATE OF ALASKA
TO PETITIONS FOR RECONSIDERATION,
PARTIAL RECONSIDERATION AND CLARIFICATION

The State of Alaska ("the State" or "Alaska"), pursuant to Section 1.429 of the Commission's rules and the Federal Register notice of October 4, 1996 (61 Fed. Reg. 51,941-42), hereby submits this opposition to the petitions for reconsideration, partial reconsideration, or clarification submitted by AT&T Corporation ("AT&T"), GTE Service Corporation ("GTE"), U S West, Inc. ("U S West"), and AMSC Subsidiary Corporation ("AMSC").[1] Each of these petitions seeks relief from, or a change in, the FCC's Report and Order implementing a Congressional mandate for geographic rate averaging and rate integration.[2]

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[1] The State supports the limited petition for clarification and reconsideration of the State of Hawaii and discusses the petition for reconsideration of IT&E Overseas, Inc. in connection the discussion of AMSC's petition. *See* pages 17-18 and n.42, below.

[2] Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, Report and Order, FCC 96-331 (August 7, 1996) ("Report and Order").

I. INTRODUCTION

In enacting the Telecommunications Act of 1996, Congress mandated that the FCC adopt rules requiring telecommunications providers to geographically average and integrate their rates for interexchange service. In taking this step, Congress recognized the importance of ensuring that all Americans -- particularly those in remote and high-cost locations such as Alaska -- receive interexchange services at affordable and nondiscriminatory prices.

The burden to be borne by petitioners for reconsideration is a heavy one. As the Commission has previously stated,

> Under established rule and case law, petitions for reconsideration are not granted to renew debate on issues fully considered and substantively resolved. Nor are they granted if they fail to cite errors or omissions in our decision so material that they would alter our conclusion.[3]

The issues raised by these petitioners have been fully considered and substantively resolved. The petitioners fail to cite any material errors or omissions by the Commission.

The Commission should recognize that, with the exception of AT&T, all of the petitioning carriers or their parent companies seek relief from or challenge the rate integration portions of the FCC's Report and Order. Yet, the Commission's discretion in the area of rate integration is quite limited. Congress was clear that, although the Commission could forbear in limited ways from enforcing geographic

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[3] Digital Electronic Message Service, 104 F.C.C.2d 836, 839-40 (1986). *See also* Evaluation of the Syndication and Financial Interest Rules, 7 FCC Rcd 345, 349 (1991).

rate averaging requirements,[4] there was to be no forbearance from rate integration.

II. AT&T'S PETITION SHOULD BE DISMISSED OR DENIED.

AT&T only reargues its position on issues that have been fully considered and on which it has not prevailed. AT&T asks the Commission to reconsider its decision not to forbear from enforcing geographic rate averaging against AT&T and other national interexchange service providers in situations in which they compete against regional carriers. It also seeks reconsideration of the FCC's decision to forbear from enforcing geographic rate averaging requirements with respect to short-term, geographically restricted promotions as long as those promotions do not exceed ninety days. AT&T argued at great length in its prior submissions in this docket that it and other providers of interexchange services throughout the Nation should be given flexibility in pricing their services to meet competition from regional carriers, and that promotions should be exempt from geographic rate averaging requirements.[5] The Commission properly rejected these

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[4] H.R. Rep. No. 104-458, 104th Cong., 2d Sess., 132 (Joint Explanatory Statement) (1996) (limited exceptions to geographic rate averaging policy under forbearance authority may be authorized).

[5] AT&T Comments at 28-32, 33-34, 36, 37-38, 41-42 (April 19, 1996); AT&T Reply Comments at 18, 20-22, 24 (May 3, 1996).

positions,[6] and AT&T has provided no persuasive reason for the Commission to reconsider its conclusions.[7]

Forbearance Where National Carriers Compete Against Regional Carriers. AT&T's arguments in support of its restated forbearance request are seriously flawed. AT&T necessarily contends that Congress could not have meant to require national carriers to comply with geographic rate averaging (and rate integration) at the same time it was opening the doors to Regional Bell Operating Company ("RBOC") entry into the interexchange business. Congress, however, knowingly did exactly that, and the Commission lacks the authority to conclude to the contrary. Indeed, Section 254(g) was intended, among other things, to incorporate the FCC's existing geographic rate averaging policies, which clearly applied to AT&T and other nation-wide carriers.[8]

Moreover, AT&T's argument ignores several marketplace realities. First, AT&T claims that regional carriers face no rate averaging constraint because their

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[6] Report and Order at ¶¶ 29-30, 39, 41.

[7] Indeed, much of AT&T's argument in its petition for reconsideration is based on the marketing campaign that Southern New England Telephone Company ("SNET") has waged in connection with its provision of interexchange service in Connecticut. AT&T's statement that "Since comments were filed in this proceeding, SNET has continued its massive -- and extremely successful -- marketing campaign . . ." (AT&T Petition at 2 (emphasis added)), demonstrates that AT&T is not relying only on new factual developments to support its petition. To the extent that the petition seeks to rely on facts that were not previously presented to the Commission but could have been, the petition should be dismissed. 47 C.F.R. § 1.429(b).

[8] H.R. Rep. No. 104-458, 104th Cong., 2d Sess., 132 (Joint Explanatory Statement) (1996).

rates need only reflect a single local exchange carrier's access charges.[9] AT&T ignores the fact that the vast majority of customers are served by a local exchange carrier that operates in more than one state and is likely to have different originating access charges in different states due to cost differences in different study areas. Indeed, each of the seven RBOCs -- the carriers Congress in the 1996 Act permitted to offer interexchange services -- operates in more than one state and has more than one study area. AT&T ignores cost differences in terminating access charges over which the originating carrier (whether it be AT&T or a regional carrier with respect to calls terminating through a different local exchange carrier) has no control. Moreover, access charges are by no means the only cost incurred in providing interexchange service.

Second, AT&T claims that differences in access charges in different parts of the Nation warrant forbearance from geographic rate averaging.[10] The Commission rightly rejected this argument. Congress required the Commission to adopt geographic rate averaging rules within six months of enactment of the Telecommunications Act with no preconditions.[11]

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[9] AT&T Petition at 6.

[10] Id.

[11] Elsewhere in Section 254, Congress instructed the FCC to address universal service issues within fifteen months of enactment. Some have argued that universal service issues can be resolved only in connection with access charge reform. *See* Report and Order at ¶ 41 & n.88 (the Commission is committed to addressing access charge reform in the time frame set forth for the universal service rulemaking). If this is true, the fact that Congress mandated that geographic rate averaging and rate integration rules be (continued...)

Third, AT&T also alleges that nation-wide carriers need flexibility because local exchange carriers will have the ability to bundle local and interexchange services together into attractively priced bundles.[12] Yet, this problem -- if it exists at all -- will disappear quickly. AT&T has announced plans to provide local exchange services throughout the Nation,[13] and it will be able to bundle local and interexchange services at least to the same extent as a regional local exchange carrier.

Finally, AT&T once again argues that the standards for forbearance set forth in the Telecommunications Act are satisfied in connection with national carrier competition against regional carriers.[14] Once again, AT&T fails to demonstrate that the Commission's decision to reject this argument in the Report

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[11](...continued)
promulgated in six months demonstrates that these rules are not dependent on access charge reform.

[12] Id. at 3.

[13] THE WALL ST. JOURNAL reported immediately after passage of the Telecommunications Act that AT&T

> issued a declaration of war yesterday on local phone companies everywhere, vowing to attach the market in all 50 states. "A $90 billion local-services market is being opened to competition for the first time. . . . And we think we can win at least a third of that market over the next five to 10 years," said Chairman Robert E. Allen.

"Landmark Telecom Bill Becomes Law," THE WALL ST. JOURNAL, Feb. 9, 1996, at B3. *See also* "AT&T Challenges the Bells," THE WALL ST. JOURNAL, June 12, 1996, at A3 (Mr. Allen states that "AT&T is going after the local service market with everything we've got.").

[14] AT&T Petition at 8-9.

and Order is erroneous. AT&T ignores the impact of geographically limited price reductions may have on customers in other parts of the Nation. Congress intended all Americans to share in the benefits of increasing interexchange service competition. That intention inescapably flows from the requirement that interexchange service rates in rural and high-cost areas be the same as the rates in urban areas. Moreover, AT&T also ignores the inescapable conclusion that the Commission cannot at this time conclude that enforcement of geographic rate averaging is not in the public interest when Congress has just decided that it is. Congress would not have required the Commission to adopt rules if it meant at the same time that the Commission could immediately forbear from applying them in a wholesale manner.[15] Thus, AT&T has failed to demonstrate that the Commission should change its position with respect to forbearance from enforcing geographic rate averaging in connection with national carrier competition with regional carriers.

Ninety Day Limit to Geographically Restrictive Temporary Promotions. AT&T has also failed to demonstrate that the Commission's decision to forbear from enforcing geographic rate averaging in connection with geographically restrictive promotions only if such promotions are limited to ninety days or less is erroneous. AT&T claims that the Commission ignored the fact that it has permitted temporary promotions of up to two years in the past.[16] Yet, the

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[15] *See* Report and Order at ¶ 39.

[16] AT&T Petition at 9-10.

Commission explicitly considered its past practices and, in light of the statute, concluded that temporary promotions that deviate from geographic rate averaging must be limited to ninety days.[17]

The Commission's position is, in the State's view, generous in providing flexibility to carriers. Given the rapid churn in the industry and perhaps greater rates of churn as competition increases, ninety days is a more than reasonable amount of time for temporary promotions. Anything longer would permit a limited exception to swallow the Congressionally-mandated rule.

III. GTE'S AND U S WEST'S PETITIONS SHOULD BE DENIED.

GTE and U S West both seek reconsideration or clarification of the Commission's conclusion in paragraph 69 of the Report and Order that rate integration requirements apply to all telecommunications providers that are commonly owned. That conclusion, however, was sound and should not be reconsidered.

The petitions by GTE and U S West raise very different questions. GTE admits that it has multiple subsidiaries that provide interstate interexchange service.[18] The question its petition poses, therefore, is whether the Commission acted illegally or unreasonably in concluding that interstate interexchange services provided by different subsidiaries should be viewed collectively for rate

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[17] Report and Order at ¶ 29.

[18] GTE Petition at 7.

integration purposes. U S West, on the other hand, seeks clarification of whether rate integration requirements attach to the provision by different subsidiaries of different services (indeed, one of the firms does not provide interexchange services).[19]

Paragraph 69 provides that rate integration requirements cannot be circumvented by having different subsidiaries operating in different states providing interstate interexchange service. If a parent corporation has more than one subsidiary which provides interstate interexchange service, then all of the subsidiaries that are providing interstate interexchange service must be treated as one for rate integration purposes.[20] To hold otherwise would read Congress's requirement for rate integration out of the books.

It is our understanding, for example, that AT&T has numerous subsidiaries in different parts of the Nation. Under the interpretation of the Telecommunications Act advocated by GTE and U S West, AT&T could circumvent rate integration requirements simply by having different subsidiaries each offer interstate interexchange service only in different parts of the Nation. Congress could not have meant to allow this result when it took the step of elevating rate

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[19] *See* U S West Petition at 3, 6.

[20] Both petitioners seek clarification or reconsideration of the conclusion allegedly reached by the Commission that GTE and U S West themselves should be treated as telecommunications providers under the Act. The key point of paragraph 69 is that all commonly-owned carriers that provide interstate interexchange service must be treated as a single entity for rate integration purposes. It does not matter whether or not the parent corporation itself is deemed to be a provider.

integration from a Commission policy to a statutory mandate. Indeed, AT&T provides interexchange service in Alaska through its subsidiary AT&T/Alascom. Congressional intent and Commission policy that AT&T/Alascom's rates be integrated with other AT&T subsidiaries cannot be doubted.[21]

GTE offers several arguments to combat the Commission's conclusion, but none is meritorious. First, GTE alleges that the Commission exceeded its authority. It contends that the language of Section 254(g) is clear and that the Commission therefore lacks the authority to interpret it.[22] GTE cannot possibly mean that in implementing Section 254(g), which requires the Commission to adopt rate integration rules, the Commission lacks the authority to explain what its rules will require. Regardless of whether the statutory language is ambiguous or not, GTE must establish that the FCC's position is either contrary to the statute or unreasonable. GTE has not done so because, as set forth above, GTE's interpretation of the statute would make rate integration a nullity.[23]

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[21] *See* H.R. Rep. No. 104-458, 104th Cong., 2d Sess., 132 (Joint Explanatory Statement) (1996); In re Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271, 3330-35 (1995); In re Application of Alascom, Inc., AT&T Corp. and Pacific Telecom, Inc. for Transfer of Control of Alascom, Inc. from Pacific Telecom, Inc. to AT&T Corp., 7 FCC Rcd 732, 743 (AT&T/Alascom tariffs will mirror AT&T's tariffs covering the contiguous 48 states). *See also* Report and Order at ¶ 78 (AT&T bound to specific rate integration commitments concerning Alaska and Hawaii).

[22] GTE Petition at 3-4. Interestingly, AMSC argues that the same language is ambiguous. AMSC Petition at 4.

[23] GTE also ignores the fact that the Commission long ago concluded that rate integration is compelled by the nondiscrimination provisions of Sections 201 (continued...)

Second, GTE's petition appears to be premised on the contention that each of its subsidiaries that provides interexchange service is providing a different service.[24] GTE ignores the fact that the FCC has previously concluded -- and proposes in this docket to continue to conclude -- that there is a single product and geographic market for interstate interexchange service, with no relevant product or geographic submarkets.[25] That finding requires, in the State's view, that the Commission consider all interstate interexchange service offerings by different subsidiaries of the same parent corporation when analyzing compliance with its rate integration rule. If there is only one interstate interexchange service and one geographic market, there is no basis for making the distinction GTE requests be made.

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[23](...continued)
and 202 of the Communications Act of 1934, as amended. MTS and WATS Market Structure, Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 FCC 2d 177, 192 (1980).

[24] GTE Petition at 9 ("Requiring each carrier to effectuate rate integration in its own rates, in fact, is consistent with many other Commission policies that regulate different telecommunications services separately.").

[25] *See* Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Fourth Report and Order, 95 FCC 2d 554, 563 (1983), *vacated* AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), *cert. denied* MCI Telecommunications Corp. v. AT&T, 509 U.S. 913, 113 S. Ct. 3020 (1993); Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271, 3286 (1995). *See also* Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, Notice of Proposed Rulemaking, CC Docket No. 96-61, FCC 96-123 at ¶¶ 40-53.

Third, GTE seeks to rely on distinctions that Congress has made elsewhere between different affiliates, presumably to demonstrate that Congress could not have meant the FCC to treat all subsidiaries that provide interexchange service as if they were one entity for rate integration purposes.[26] However, the examples to which GTE points do no such thing. Indeed, in each case to which it points Congress was dealing with affiliates that are offering different services, including situations in which Congress has required that separate affiliates provide different services. Here, of course, the Commission is dealing with one service -- interstate interexchange service -- and Congress has not required that GTE or U S West (or any other carrier) offer interexchange service through more than one subsidiary.

Fourth, GTE contends that the Commission's application of rate integration would require that different GTE subsidiaries cross-subsidize one another in a manner prohibited by FCC policy or regulation. There is nothing in the FCC's Report and Order that would require one GTE subsidiary to misallocate costs to another subsidiary, purchase services at above market price or cost, or engage in other forms of cross-subsidization. The asserted cross-subsidization is no different than a local exchange carrier's use of the same local exchange basic service rate for two households with different local loop costs. Moreover, even if GTE can establish that there is a conflict between the FCC's rate integration rule and another FCC rule or policy -- which it has not done -- it would not follow that the Commission's rate integration rule must give way. If there is any conflict between

[26] GTE Petition at 4 & n.5.

rate integration -- a rule mandated by Congress -- and a Commission rule that is not explicitly mandated by Congress, it is the latter rule which must give way.

For all of these reasons, the Commission's decision in paragraph 69 of the Report and Order to treat all interstate interexchange service offerings by commonly-owned affiliates as one offering for rate integration purposes was both rational and, indeed, inescapable. The rates for interstate interexchange service offered by each GTE subsidiary, therefore, must be integrated with the others. With respect to U S West's petition, no reconsideration or clarification is necessary because it is apparent that, as U S West states, U S West Media Group and U S West Communications Group offer different services. U S West Media Group does not appear to offer interstate interexchange service at all; thus, it has no interstate interexchange service rates that must be integrated.[27]

IV. AMSC'S PETITION SHOULD BE DISMISSED OR DENIED.

AMSC seeks relief from the application of the rules required by Section 254(g). It alleges that Congress did not intend rate integration to apply to mobile satellite service as offered by AMSC. Alternatively, AMSC alleges that AMSC's practice of charging users in Alaska and Hawaii more than users in other states is consistent with rate integration or that the Commission should forbear from enforcing rate integration requirements with respect to AMSC's service.

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[27] The State does not oppose GTE's request for clarification to the extent that it asks the Commission to clarify that this proposition applies to all providers of telecommunications services, not just GTE owned providers.

As a preliminary matter, the Commission should recognize that AMSC presented essentially the same arguments to the Commission in comments submitted prior to the issuance of the Report and Order,[28] and the Commission has already rejected them.[29] AMSC has given the Commission no persuasive reason to change its mind.

The language of the statute is clear and requires the position the Commission has taken concerning the application of Section 254(g) to AMSC. Geographic rate averaging applies to all providers of interexchange service; rate integration applies to all providers of interstate interexchange service. 47 U.S.C. § 254(g). AMSC admits that it provides interstate interexchange service.[30] AMSC cannot establish that the Commission's decision to treat AMSC's service offering as an interexchange service to which Section 254(g) applies is not a reasonable reading of the statute. Indeed, a contrary reading of the statute is impossible.

AMSC contends that Congress intended only to codify the Commission's pre-existing rate integration policy and that the Commission's pre-existing rate integration policy did not apply to AMSC. The State disagrees. As the section of

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[28] Comments of AMSC Subsidiary Corporation (April 19, 1996) ("AMSC Comments").

[29] Report and Order at ¶ 54.

[30] AMSC Petition at 2. *See also* AMSC Request for Extension of Compliance Period at 2 (August 25, 1996). In its initial comments in this docket, AMSC admitted that it provided interexchange service and requested only that the Commission forbear from enforcing rate integration requirements with respect to its service offering. AMSC Comments at 1, 3.

legislative history quoted by AMSC demonstrates,[31] Congress clearly expanded the scope of rate integration in passing Section 254(g). Congress said that it was intending to incorporate the pre-existing policies of geographic rate averaging and rate integration and intending to require geographic rate averaging and rate integration. If all Congress intended to do was to incorporate pre-existing policies, the legislative history would not have stated that Congress was intending to do more than merely incorporate the pre-existing policies.

Congress's expansion of geographic rate averaging and rate integration is otherwise clear. For example, the Commission's pre-existing policy never required geographic rate averaging (it only expressed a strong preference).[32] Congress also expanded the scope of geographic rate averaging to cover intrastate interexchange service.[33] Rate integration never applied to Guam and the Commonwealth of Northern Mariana Islands.[34] These are just three examples that disprove AMSC's assertion that all Congress intended to do was to codify pre-existing Commission policies.

AMSC also contends that its practice of charging users in Alaska and Hawaii more for service than it charges users in other states is consistent with the statute. Once again, the State disagrees. AMSC claims that the higher costs of

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[31] AMSC Petition at 5, *quoting* H.R. Rep. No. 104-458, 104th Cong., 2d Sess., 132 (Joint Explanatory Statement) (1996).

[32] *See* Report and Order at ¶ 6 and ns. 10, 11.

[33] *See* Report and Order at ¶¶ 42-45.

[34] *See* Report and Order at ¶ 55 and n.118.

serving Alaska and Hawaii justify rate surcharges for those states. By focusing solely on the rate integration provisions of the statute, however, AMSC ignores the geographic rate averaging requirements. "The rates charged by providers of interexchange telecommunications services", such as AMSC, "to subscribers in rural and high-cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas."[35] AMSC imposes a significant surcharge (up to 100 percent) on service in Alaska and Hawaii because service in these locations requires more satellite power. AMSC has not established that the greater power requirements impose a greater marginal cost on AMSC than the marginal costs of serving other locations. Regardless, any higher costs of providing service to Alaska and Hawaii must be averaged into AMSC's interexchange service cost structure and recouped in a geographically averaged rate structure.

Moreover, the Commission did not err in refusing to forbear from enforcing rate integration (and geographic rate averaging) with respect to AMSC's service offering. AMSC claims that its service is unique in that its system provides intraLATA, interstate, and international interexchange services.[36] Yet, the same statement could be made by others, including AT&T, with respect to which rate integration requirements unquestionably must be enforced.

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[35] 47 U.S.C. § 254(g); 47 C.F.R. § 64.1701(a).

[36] AMSC Petition at 8.

AMSC asserts that the Commission has previously approved AMSC's system design and rate structure.[37] Yet, as the Commission noted in the Report and Order, the action taken by Commission Staff permitting AMSC's tariff to go into effect was neither action by the Commission itself and nor a finding that AMSC's tariff was lawful.[38] Moreover, that action predated enactment of Section 254(g), which mandates geographic rate averaging and rate integration. For all of these reasons, AMSC's petition should be dismissed or denied.

As the Commission is well aware, AMSC has also filed a Request for Extension of Compliance Deadline.[39] In reviewing these petitions for reconsideration, partial reconsideration, and clarification, the Commission should keep in mind how its action on that request and these petitions will shape carrier responses to the Congressional mandate in Section 254(g) for geographic rate averaging and rate integration.

This point is drawn clearly by IT&E Overseas, Inc. ("IT&E") in its petition for partial reconsideration. IT&E suggests that the Common Carrier Bureau's Order and Order Seeking Comment[40] providing AMSC a temporary extension of the deadline to comply with the Commission's rate integration rule pending

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[37] AMSC Petition at 9.

[38] Report and Order at ¶ 54.

[39] The State also incorporates herein by reference the Comments of the State of Alaska on Request of AMSC Subsidiary Corp. for Extension of Compliance Period (October 4, 1996).

[40] DA 96-1538 (September 13, 1996).

Commission action on AMSC's extension request somehow supports forbearance from rate integration for those providing interexchange service by satellite to noncontiguous U.S. locations.[41] The Bureau's action does no such thing. It only provides the Commission with an opportunity to act on AMSC's request without forcing AMSC into noncompliance during the Commission's consideration of that request. In reviewing all of the requests and petitions before it, the Commission should be mindful of Congress's clear direction in Section 254(g) and not create limitations and exceptions that will circumvent that direction.[42]

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[41] IT&E Petition at 8.

[42] The State does not oppose the Petition for Clarification and Reconsideration of the State of Hawaii.

Hawaii requests that the Commission clarify that services as to which geographic rate averaging will not be enforced remain subject to rate integration. Alaska believes that this proposition is already clear from paragraph 27 of the Report and Order (contract tariffs, Tariff 12 offerings, and optional calling plans must be available to similarly situated customers regardless of geographic location; thus, they must be available in Alaska and Hawaii if the carrier serves these locations). Moreover, the legislative history of Section 254(g) makes clear that there can be no forbearance from rate integration. *See* n.4, above.

Hawaii also asks the Commission not to use AT&T's current (or former) tariffs as a guide as to what is permissible in light of the statutory requirements for geographic rate averaging and rate integration. This request is both sound policy and compelled by the Commission's treatment of the "prior tariff approval" issue raised by AMSC and discussed at page 17, above. The Commission has not reviewed all of AT&T's current and past tariff offerings and cannot conclude that they are all consistent with Section 254(g).